DIC Entertainment, LP *and* Motion Picture Screen Cartoonists and Affiliated Optical Electronic and Graphic Arts, Local 839, IATSE. Case 31–CA–23986

October 29, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND BRAME

Pursuant to a charge filed on July 9, 1999,[1] the General Counsel of the National Labor Relations Board issued a complaint on August 6, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 31–RC–7705. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On September 13, 1999, the General Counsel filed a Motion for Summary Judgment. On September 14, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling On Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's determination in the representation proceeding to permit the "storyboard supervisors" to vote under challenge and their inclusion in the unit.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.[2] The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a limited partnership with an office and place of business in Burbank, California, has been engaged in the production of animated television and other motion picture productions.

The Respondent, in conducting its business operations, annually purchases and receives at its Burbank, California facility goods or services valued in excess of $50,000 directly from points outside the State of California and annually derives gross revenues in excess of $500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held June 14, 1999, the Union was certified on or about June 25, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> INCLUDED: Full-time and regular part-time employees of the Employer who work in the production of animated cartoons at its facility at 303 N. Glenoaks Blvd., Burbank, California (including storyboard revisionists, model designers, color key artists, vision development artists and background artist).
>
> EXCLUDED: Clerical employees, writers who are independent contractors, all other employees, guards, and supervisors within the meaning of the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

[1] Although the Respondent's answer to the complaint denies having knowledge or information sufficient to form a belief as to the date the charge was filed and mailed, a copy of the charge and postal return receipt are attached to the General Counsel's motion, and the Respondent has not challenged the authenticity of those documents in response to the Notice to Show Cause. In addition, the Respondent admits that a copy of the charge was served by certified mail.

[2] The Board's Order Denying Review in the representation proceeding is published at 328 NLRB No. 86 (1999). In that Order, the Board permitted "storyboard supervisors" to vote under challenge. The tally of ballots reflects that there were no challenged ballots and that nine votes were cast for the Union and six votes cast against the Union. In these circumstances, the Regional Director certified the Union as the exclusive representative of the unit. However, he mistakenly included "storyboard supervisors" in the unit. Storyboard supervisors are neither included in nor excluded from the bargaining unit covered by the certification, inasmuch as the Board, in denying the Employer's request for review of the Regional Director's decision in this matter, excepted to the unit placement of storyboard supervisors and ordered them voted subject to challenge. In the event that collective bargaining cannot resolve the status of the storyboard supervisors, either party is free to file a unit clarification petition. See *Kirkhill Rubber Co.*, 306 NLRB 559 (1992).

[3] The Respondent's request that the complaint be dismissed is therefore denied.

B. Refusal to Bargain

Continuing on or about July 6, 1999, and continuing to date, the Union has requested the Respondent to bargain and, commencing on or about July 8, 1999, and at all times thereafter, the Respondent has failed and refused. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after July 8, 1999, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, DIC Entertainment, LP, Burbank, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Motion Picture Screen Cartoonists and Affiliated Optical Electronic and Graphic Arts, Local 839, IATSE, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

INCLUDED: Full-time and regular part-time employees of the Employer who work in the production of animated cartoons at its facility at 303 N. Glenoaks Blvd., Burbank, California (including storyboard revisionists, model designers, color key artists, vision development artists and background artist).

EXCLUDED: Clerical employees, writers who are independent contractors, all other employees, guards, and supervisors within the meaning of the Act.

(b) Within 14 days after service by the Region, post at its facility in Burbank, California, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 31 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 8, 1999.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Motion Picture Screen Cartoonists and Affiliated Optical Electronic and Graphic Arts, Local 839, IATSE, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and

[4] If this Order is enforced by a Judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

conditions of employment for our employees in the bargaining unit:

INCLUDED: Full-time and regular part-time employees of the Employer who work in the production of animated cartoons at its facility at 303 N. Glenoaks Blvd., Burbank, California (including storyboard revisionists, model designers, color key artists, vision development artists and background artist).

EXCLUDED: Clerical employees, writers who are independent contractors, all other employees, guards, and supervisors within the meaning of the Act.

DIC ENTERTAINMENT, LP